IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE R.BASANT

TUESDAY, THE 24TH JULY 2007 / 2ND SRAVANA 1929

Crl.MC.No. 1860 of 2007()

CC.427/1999 of ADDL. CHIEF JUDICIAL MAGISTRATE COURT, TRIVANDRUM

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PETITIONER: ACCUSED NOS.2 & 4

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1. MOHAN KUMAR, S/O. ACHUTHAN PILLAI,
   GOPALA NILAYAM, KADINAMKULAM VILLAGE,
   THIRUVANANTHAPURAM.

2. ABDUL MAJEED, S/O. ALIKUNJU,
   AZLAM NIVAS, NEAR RASHTRA DEEPIKA OFFICE,
   PALLITHOTTAM WARD, KOLLAM.

BY ADV. SRI.M.P.MADHAVANKUTTY
SRI.GOKUL DAS V.V.H.

RESPONDENTS: DEFACTO COMPLAINANT & STATE

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1. KUMAR, S/O. SREEDHARAN NAIR,
   SHIVA COTTAGE, MOONNUKALLU MOODU,
   MARUTHOOR VILLAGE, NEYYATTINKARA,
   THIRUVANANTHAPURAM.

2. SUB INSPECTOR OF POLICE,
   VANCHIYOOR POLICE STATION, THIRUVANANTHAPURAM,
   REPRESENTED BY PUBLIC PROSECUTOR,
   HIGH COURT OF KERALA, ERNAKULAM.

BY PUBLIC PROSECUTOR SRI.GIKKU JACOB

THIS CRIMINAL MISC. CASE HAVING COME UP FOR ADMISSION ON 24/07/2007, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

R.BASANT, J

Crl.M.C.No.1860 of 2007

Dated this the 24th day of July, 2007

O R D E R

Petitioners are accused 2 and 4 in a prosecution for offences, punishable, inter alia, under Section 420 I.P.C. Cognizance has been taken on the basis of the final report submitted by the police. Accused 1, 2, 4 & 5 have appeared before the court.

2. Accused 1 and 5 claimed discharge. Their claim for discharge was considered on merits and turned down by the learned Magistrate. Surprisingly it appears that while considering the claim for discharge of accused 1 and 5, the question of discharge of the petitioners was not considered. Normally, the consideration under Section 239/240 Cr.P.C must be undertaken in the case together in respect of all the accused. Piecemeal consideration of the liability for charges to be framed/discharge under Section 239/240 Cr.P.C in one case does not appear to be proper. Be that as it may, accused 1 and 5 have challenged the rejection of their plea for discharge in a Crl.R.P before this Court. That Crl.R.P is pending now. There is an order of stay against further proceedings against the 1st and 5th accused, it is submitted.

3. The petitioners want their plea for discharge also to be considered. Report of the learned Magistrate was called for. The

learned Magistrate in the report submits that the plea of the petitioners (Accused 2 and 4) for discharge can be considered straight away - within a period of one month from the date of their filing such a claim for discharge before the learned Magistrate. No separate application to claim discharge appears to be necessary. However, the learned counsel for the petitioners submits that the petitioners shall forthwith make an application for consideration of the question of charge/discharge under Section 239/240 Cr.P.C.

4. This Crl.M.C is, in these circumstances, dismissed, but with the observation that if the petitioners claim discharge under Section 239/240 Cr.P.C, such plea for discharge must be considered by the learned Magistrate on merits and expeditiously - within a period of one month from such date.

Hand over a copy of this order to the learned counsel for the petitioner.

(R.BASANT, JUDGE)

rtr/-